

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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JAMES C. BROCK,

Plaintiff,

v.

CARRION, LTD., et al.,

Defendants.

NO. CIV. S-02-2762 FCD PAN

MEMORANDUM AND ORDER

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The matter is before the court on plaintiff's motion to enforce the settlement agreement entered on the record with defendants on October 17, 2005 and later supplemented by a written agreement between the parties.¹ (Ex. B to Stralen Decl., filed Nov. 22, 2005.) Plaintiff filed the instant motion, pursuant to an order shortening time, on November 23, 2005

¹ Because oral argument will not be of material assistance, the court orders this matter submitted on the briefs. E.D. Cal. L.R. 78-230(h).

1 because defendants had not paid the initial settlement payment of
2 \$100,000.00, due November 10, 2005. Said payment was made,
3 however, on November 30, 2005. Plaintiff, nonetheless, seeks by
4 this motion, under the terms of the parties' written agreement,
5 interest due for the late payment and attorneys' fees of
6 \$3,960.00 incurred in bringing the motion.

7 In response to the motion, defendants' counsel acknowledges
8 that the settlement payment was late but explains that the delay
9 was "due to [her] husband taking ill and being hospitalized, as
10 well as [her] clients' difficulty in obtaining the settlement
11 funds from an escrow account." (Hambleton Decl., filed December
12 5, 2005, ¶ 3.) Based on counsel's representations, the court
13 DENIES without prejudice plaintiff's motion. The final payment
14 of \$140,000.00 is due on or before December 13, 2005. Should
15 defendants again fail to make timely payment, plaintiff may renew
16 this motion and seek, pursuant to the settlement agreement,
17 interest accruing since the original payment due date of
18 November 10 and attorneys' fees incurred in bring this motion as
19 well as any subsequent motion.

20 IT IS SO ORDERED.

21 DATED: December 6, 2005

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23 /s/ Frank C. Damrell Jr.
24 FRANK C. DAMRELL, Jr.
25 UNITED STATES DISTRICT JUDGE
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